



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 4, 2023

By ECF

The Honorable Philip M. Halpern
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: *Students for Fair Admissions v. United States Military Academy at West Point, et al.*, No. 23 Civ. 8262 (PMH)

Dear Judge Halpern:

Defendants the United States Military Academy at West Point; the United States Department of Defense; Lloyd Austin, Secretary of Defense; Christine Wormuth, Secretary of the Army; Lieutenant General Steven Gilland, Superintendent of West Point; and Lieutenant Colonel Rance Lee, Director of Admissions for West Point, write respectfully in response to Plaintiff's motion for an injunction pending appeal. *See* Dkt. Nos. 80, 81.

The Court should deny Plaintiff's motion for an injunction pending appeal. Rule 62(d) of the Federal Rules of Civil Procedure provides that while "an appeal is pending from an interlocutory order . . . that . . . refuses . . . an injunction, the court may . . . grant an injunction." As Plaintiff notes, courts in this District routinely deny motions for injunctions pending appeal following a denial of a motion for a preliminary injunction. *See Columbus Ale House, Inc. v. Cuomo*, No. 20 Civ. 4291 (BMC), 2020 WL 6507326, at *1 (E.D.N.Y. Nov. 5, 2020) ("When a district court has denied a motion for a preliminary injunction that would change the status quo pending a decision on the merits, it is highly unlikely that it will then grant that same injunction pending appeal of the denial."); *see also, e.g., Frey v. Nigrelli*, No. 21 Civ. 05334 (NSR), 2023 WL 2929389, at *2–5 (S.D.N.Y. Apr. 13, 2023); *Doe v. Riverdale Country Sch.*, No. 17 Civ. 9537 (JPO), 2018 WL 10323030, at *1 (S.D.N.Y. Jan. 12, 2018); *Dexter 345 Inc. v. Cuomo*, No. 11 Civ. 1319 (RJS), 2011 WL 1795824, at *3 (S.D.N.Y. May 3, 2011), *aff'd*, 663 F.3d 59 (2d Cir. 2011). Accordingly, the Court should deny Plaintiff's motion for an injunction pending appeal for the reasons it denied Plaintiff's motion for a preliminary injunction, as well as for the reasons stated in Defendants' opposition to Plaintiff's motion for a preliminary injunction. *See* Dkt. No. 78; *see also* Dkt. Nos. 47–53 (presenting Defendants' arguments opposing Plaintiff's motion for a preliminary injunction).

We thank the Court for its consideration of this letter.

Respectfully,

DAMIAN WILLIAMS
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Southern District of New York

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